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**From:** Varilek, Kimberly [Varilek.Kimberly@epa.gov]  
**Sent:** 5/21/2018 11:43:13 PM  
**To:** Chairman Mark Fox [chairmanfox@mhanation.com]  
**CC:** John Fredericks [JFredericks@ndnlaw.com]; sberquist@mhanation.com; lisa.lonefight@gmail.com; Bernie Fox [berniefox@mhanation.com]  
**Subject:** R8 EPA - Information on MHA Refinery Inquiry - NPDES Permitting in a No-Discharge Scenario

Good afternoon Chairman Fox -

On behalf of the Region 8 EPA, I'm forwarding the following information to you in response to one of MHA's questions about refinery permitting in a no-discharge scenario:

On March 14, 2018, EPA Region 8 management and staff met with representatives from the MHA Nation, Thunder Butte Petroleum, attorneys for the Tribe/Thunder Butte and facility contractors regarding the current status of the proposed refinery project. At the meeting, the representatives inquired as to the applicability of Clean Water Act (CWA) National Pollutant Discharge Elimination System (NPDES) permitting requirements and accompanying National Environmental Policy Act (NEPA) analysis if the refinery was constructed as a "closed-loop" facility that did not discharge any process wastewater but only discharged storm water.

EPA Region 8 has consulted with the EPA Office of General Counsel Water Law Office regarding this inquiry. If the refinery is a "closed-loop" zero-discharge facility with no discharge of process wastewater and only a discharge of storm water, the following would generally be true depending on the facility design:

- The facility would not need an NPDES permit for its process wastewater due to its closed-loop zero-discharge construction as long as the facility did not discharge. Therefore, there would be no need for an NPDES process wastewater permit nor a NPDES new source determination or a NEPA analysis.
- Some zero-discharge facilities choose to obtain NPDES permits in order to secure protection for discharge in the event of an upset or bypass condition. In the event of an upset or bypass resulting in an unauthorized discharge from a point source to a water of the U.S., the facility could be subject to a CWA enforcement action. If the MHA Nation/Thunder Butte chooses to obtain an NPDES permit for its closed-loop zero discharge facility for such circumstances, a new source determination and NEPA analysis would be required prior to obtaining an NPDES permit.
- The proposed "closed loop" zero-discharge facility could likely be covered under the Multi-Sector General Permit (MSGP) for storm water discharges. No NEPA analysis would be needed for obtaining coverage under the MSGP because this analysis was already conducted prior to issuance of the MSGP.
- If the facility is constructed as a zero-discharge facility but ultimately determines that it will need to discharge wastewater (other than storm water discharges which may be eligible for coverage under the MSGP), the facility will require an NPDES permit for its wastewater discharge as a "new source" subject to the oil refining Effluent Limit Guideline and therefore requiring NEPA compliance prior to issuance of the NPDES permit.
- Design and construction of a closed-loop zero discharge facility may have implications/applicability for other statutory and regulatory requirements, e.g. RCRA, and will depend on the final design of the refinery.

EPA Region 8 is willing to work with the MHA Nation/Thunder Butte to identify the applicable statutory and regulatory requirements once a design plan is more definitive. Please contact Sandra Spence at 303.312.6947 for further questions pertaining to NPDES permitting requirements.

Thank you – Kim Varilek

Kimberly D. Varilek  
Senior Tribal Advisor  
EPA Region 8 - Office of Regional Administrator  
1595 Wynkoop St.  
Denver, CO 80202  
(303) 312-6264